

1 MELINDA HAAG (CABN 132612)
2 United States Attorney

3 MIRANDA KANE (CABN 150630)
4 Chief, Criminal Division

5 KYLE F. WALDINGER (ILBN 6238304)
6 Assistant United States Attorney

7 450 Golden Gate Avenue, 11th Floor
8 San Francisco, California 94102
Telephone: (415) 436-6830
Facsimile: (415) 436-7234
E-mail: kyle.waldinger@usdoj.gov

9 Attorneys for Plaintiff

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) No. CR 08-0237 EMC
14 Plaintiff,)
15 v.) STIPULATION AND [PROPOSED] ORDER
16 DAVID NOSAL,) RE-SETTING STATUS HEARING DATE
17 Defendant.) AND DOCUMENTING EXCLUSION OF
TIME UNDER THE SPEEDY TRIAL ACT

18 The United States, by and through Assistant United States Attorney Kyle F. Waldinger,
19 and the defendant David Nosal, by and through his counsel Steven F. Gruel, submit this
20 stipulation and proposed order to continue the August 22, 2012, status hearing to August 29,
21 2012, and to exclude time under the Speedy Trial Act from the date of this stipulation to August
22 29, 2012. The parties stipulate, and jointly inform the Court, as follows:

23 1. On or about February 2, 2010, the United States filed its Notice of Appeal in this
24 matter, seeking reversal of the District Court's dismissal of several counts of the Superseding
25 Indictment. At that time, the District Court vacated the trial schedule.

26 2. After lengthy proceedings in the Ninth Circuit Court of Appeals, on April 10,
27 2012, an en banc panel of the Ninth Circuit issued its opinion affirming the district court's
28 dismissal order.

STIP. & [PROPOSED] ORDER RE-SETTING STATUS HEARING DATE
AND DOCUMENTING EXCLUSION OF TIME [CR 08-0237 EMC]

1 3. The Solicitor General did not file a petition for a writ of certiorari to the Supreme
2 Court. Accordingly, on August 2, 2012, the United States moved the Ninth Circuit to issue the
3 mandate. The Ninth Circuit did so on August 3, 2012.

4 4. This Court previously set a status hearing in this case for August 22, 2012.
5 However, based on the unavailability of undersigned defense counsel due to a medical issue,
6 defense counsel is unavailable for the hearing on August 22, 2012 (as well as on any of the dates
7 on the Court's criminal calendar before then). Counsel for both parties, however, are available
8 on August 29, 2012, at 2:30 p.m. Based on the unavailability of defense counsel, the parties
9 stipulate and agree that time should be excluded from the date of this stipulation to August 29,
10 2012, to ensure continuity of defense counsel under 18 U.S.C. § 3161(h)(7)(B)(iv).

11 5. For these reasons, the parties jointly request that the Court **VACATE** the August
12 22, 2012, status hearing, and re-set that hearing for August 29, 2012. The parties also jointly
13 request that the Court make a finding of excludable time under the Speedy Trial Act from the

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1 date of this stipulation to August 29, 2012, based on the unavailability of defense counsel and for
2 the need for continuity of defense counsel.

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4 SO STIPULATED.

5 DATED: August 7, 2012

MELINDA HAAG
United States Attorney

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9 DATED: August 7, 2012

/s/
KYLE F. WALDINGER
Assistant United States Attorney

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[PROPOSED] ORDER

14 For the reasons stated above, the parties' joint request that the August 22, 2012, status
15 hearing be vacated is GRANTED. The parties are ORDERED to appear before the Court for a
16 status hearing on August 29, 2012, at 2:30 p.m. Based on the facts set forth in the parties'
17 stipulation, the Court finds that, taking into the account the public interest in the prompt
18 disposition of criminal cases, granting a continuance until August 29, 2012, is necessary based on
19 the need for continuity of defense counsel. *See* 18 U.S.C. § 3161(h)(7)(B)(iv). Given these
20 circumstances, the Court finds that the ends of justice served by excluding the period from the
21 date of the parties stipulation (August 7, 2012), to August 29, 2012, outweigh the best interest of
22 the public and the defendant in a speedy trial. *Id.* § 3161(h)(7)(A).

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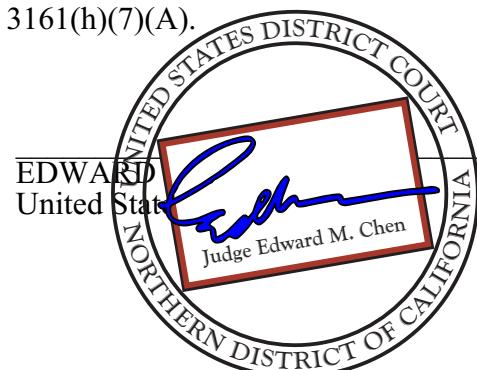
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DATED: August 9, 2012



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AND DOCUMENTING EXCLUSION OF TIME [CR 08-0237 EMC]